**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 6579 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE DN PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**JAYABEN W/O NARAYANDAS NATHUMAL HEMRAJANI - Petitioner(s)**
**Versus**
**DISTRICT COLLECTOR- BARODA & 3 - Respondent(s)**

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**Appearance :**
MR YM THAKKAR for the Petitioner.
Mr. Amit Patel, Assistant Government Pleader for Respondent nos.1 and 4.
MR HS MUNSHAW for Respondent no.3.

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**CORAM : HONOURABLE MR.JUSTICE DN PATEL**

**Date : 01/05/2007**

**ORAL JUDGMENT**

The present petition has been preferred against the order dated 4th July/August, 2005 passed by

the the District Development Officer, Vadodara (Annexure “G” to the memo of the petition) to the effect that under section 67 of the Bombay Land Revenue Code, 1879, there is a breach of condition by the present petitioner and therefore, penalty has been imposed upon the petitioner for the fact that after getting NA permission for the land in question, the petitioner has not started non-agricultural usage of the land in question.

2. I have heard the learned counsel for the petitioner who has submitted that initially the petitioner had in mind non-agricultural usage for the land in question and therefore, an application was preferred for getting NA permission which was granted by the concerned respondent authority vide order dated 26th March, 1997 and 4th October, 1997. But thereafter, for the reasons beyond the control of the present petitioner, the non-agricultural usage which was permitted to the petitioner was not brought into effect. But agricultural operations were continued by the present petitioner. Thereafter, an application was preferred on 15th July, 2004 under Rule 91 of the Gujarat Land Revenue Rules, 1972, for agricultural assessment of the property in question as non-agricultural usage was never started by the present petitioner. But instead of allowing this application under Rule 91 of the Rules of 1972, a show cause notice was given by respondent no. 3 dated 29th April, 2005 for the alleged breach of section 67 of the Code, 1879 which was replied in detail, but a final order was passed by the respondent no. 3 on 29th April, 2005

(Annexure “H” to the memo of the petition) in pursuance of their resolution dated 4th July, 2005 (Annexure “J” to the memo of the petition), whereby penalty has been imposed upon the present petitioner for the alleged breach of section 67 of the Code of 1879 as the petitioner has not started non-agricultural usage of the property in question after getting NA permission. It is submitted by the learned counsel for the petitioner that NA permission is not imposing a duty upon petitioner, to start non-agricultural operation. On the contrary, it is the power vested in the petitioner that as and when the petitioner wants to start non-agricultural usage of the property in question within time stipulated in the permission, it can be started. Subject to the conditions of NA permission, it is the power vested in the petitioner to start non-agricultural usage. Non-agricultural usage permission is not a duty cast upon the present petitioner and hence the notice issued by the respondent no. 3 dated 29th April, 2005 and the consequent order passed by the respondent no. 3 dated 29th April, 2005 (at Annexures “E” and “H” respectively) deserve to be quashed and set aside and a direction may be given to the concerned respondent authorities to fix agricultural assessment for the property in question in pursuance of an application preferred by the present petitioner under Rule 9 of the Rules, 1972 which is dated 15th July, 2004.

3. I have heard the learned counsel for respondent no. 3 who has submitted that after getting NA permission, the petitioner has not started non-

agricultural usage of the property in question and thereby there is a loss of revenue to respondent no. 3. In fact, after getting NA permission, the petitioner ought to start non-agricultural usage of the property in question and therefore, show cause notice was given by the respondent no. 3 on 29th April, 2005 and thereafter, a final order was passed on 4th August, 2005. It is also submitted by the learned counsel for respondent no. 3 that the impugned order is an appealable order and hence, the petition may not be entertained by this Court.

4. I have also heard the learned Assistant Government Pleader for the respondent State who has submitted that after getting NA permission from the concerned respondent authorities, the petitioner ought to have started non-agricultural usage of the property. By not doing this, there is a loss of revenue to the State Government and the impugned order passed by the respondent no. 3 dated 4th July/August, 2005 is an appealable order.

5. Having heard the learned counsels for both the sides and looking to the facts and circumstances of the case, the order dated 4th July/August, 2005 passed by the respondent no. 3 District Development Officer, Vadodara (at Annexure “G” to the memo of the petition is hereby quashed and set aside mainly for the following facts and reasons:

(i) The present petitioner applied for Non-agricultural usage permission for the land bearing survey no.136/3 situated at village

Tulsigam, Ta: Savli, Dist: Vadodara, admeasuring 55652 sq.mtrs. for excavation of stones. Non-agricultural usage permission was granted by the concerned respondent authorities on 26th March, 1997 and 4th October, 1997. The petitioner continued with agricultural upon the land in question. Non-agricultural usage was never started. Looking to the facts of the present case and the provisions of the Bombay Land Revenue Code, NA permission granted is not the duty cast upon the petitioner that the petitioner ought to start with non-agricultural usage. On the contrary, it is the power vested in the petitioner to whom NA permission is given to start or not to start non-agricultural usage of the property.

(ii) Looking to the facts of the present case, for the land bearing survey no. 132, 131 and 135 after getting NA permission, the petitioner continued agricultural usage and has not excavated stones from the land in question. It is not the case of the respondents that non-agricultural usage has already been started and therefore, there is no question of non-agricultural assessment for the land in question whatsoever arises. There is no breach of section 67 of the Code of 1879. Non-agricultural usage permission merely enables the petitioner to start non-agricultural usage. The State cannot compel citizens to start with non-agricultural operations no sooner did NA permission is given.

(iii) Looking to the facts and circumstances of

the case, despite alternative remedy is available, I see no reason to relegate the present petitioner to alternative remedy. In fact, alternative remedy is no bar for entertaining the petition. In the facts of the present case, the present petitioner continues with agricultural operation for the land bearing survey no. 132, 131 and 135. With this admitted fact, I see no reason to relegate the present petitioner to for alternative remedy.

6 As a cumulative effect of the above facts and reasons, the impugned order dated 4th July/August, 2005 passed by the respondent no. 3 is hereby quashed and set aside. The concerned respondent authority is hereby directed to assess the land in question for agricultural purpose, in pursuance of the application preferred by the petitioner under Rule 91 of the Rules, 1972 which is dated 15th July, 2004, as expeditiously as possible and preferably within a period of eight weeks from the date of receipt of writ from this Court. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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